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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NANCY COURTNEY-SKAY,

Case No. 2:18-cv-00306-JAD-NJK

Plaintiff,

vs.

**MOTION TO RESCHEDULE
EARLY NEUTRAL EVALUATION
SESSION**

HLS OF NEVADA, LCC, a Nevada Limited
Liability Company dba RIGHTSIZE
FUNDING and NEVADA WEST
FINANCIAL,

Defendant.

HLS OF NEVADA, LLC DBA NEVADA WEST FINANCIAL hereby requests to reschedule the Early Neutral Evaluation Session. This Motion is made based on the following Memorandum of Points and Authorities and the Declaration of David Rosenberg attached hereto as **Exhibit A**.

MEMORANDUM OF POINTS AND AUTHORITIES

On August 27, 2018, this Court issued an Order Scheduling Early Neutral Evaluation Session [ECF No. 10]. Pursuant to the Order, “a request to reschedule made less than 14 days before the scheduled ENE will not be granted absent compelling circumstances, a strong showing of good cause, and an explanation of why any scheduling conflict could not be resolved.” ECF No. 10 at 1:21-23.

Here, the only representative of HLS who can attend the ENE just discovered an irreconcilable conflict for the currently scheduled date, October 25, 2018, for the ENE. *See*

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1 Declaration of David Rosenberg, Ex. A. Mr. Rosenberg has an emergent surgery scheduled for
2 October 23, 2018, which given the nature of same and the limited availability of his surgeons, must
3 go forward. *Id.* Further, given the recovery period for the surgery, Mr. Rosenberg will be immobile
4 and recovering at his parents' house in Los Angeles shortly after the surgery. *Id.* Unfortunately,
5 the surgery cannot be put off any longer and must be completed on October 23, 2018. *Id.* As HLS
6 has no employees, there is no one else that can be sent in Mr. Rosenberg's place to take part in the
7 ENE. *Id.* These compelling circumstances justify a rescheduling of the ENE.

8 Here, the last day to submit a request to rescheduled the ENE was October 11, 2018. Good
9 cause is shown here because Mr. Rosenberg was not instructed until October 11, 2018 that a second
10 surgery would be scheduled emergently on October 16, 2018. *Id.* at ¶ 20. After indicating Mr.
11 Rosenberg was unable to complete the surgery on October 16, 2018, his surgeons instructed him
12 on October 15, 2018 that the next available date for the surgery was October 23, 2018. *Id.* at ¶ 21.
13 Given the urgency of the second surgery to rectify the immense pain Mr. Rosenberg is suffering,
14 as well as the limited availability of his surgeons, the surgery must go forward on October 23,
15 2018. *Id.* Once Mr. Rosenberg discovered the conflict and presented same to the undersigned
16 counsel, HLS immediately began drafting the instant Motion.

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1 Given the compelling circumstances of Mr. Rosenberg's required second surgery, the
2 diligence in presenting this Motion to the Court, the fact that no one can substitute in Mr.
3 Rosenberg's place on behalf of HLS, as well as the inability to continue the surgery any further,
4 HLS believes the Court should reschedule the ENE to the week of November 26, 2018 or further
5 at the convenience of the Court and parties.

6 **CONCLUSION**

7 Based upon the foregoing, HLS respectfully requests that Early Neutral Evaluation
8 Session be rescheduled accordingly.

9 DATED October 16, 2018.

KIM GILBERT EBRON

/s/ Jason G. Martinez

JASON G. MARTINEZ, ESQ.

Nevada Bar No. 13375

KAREN L. HANKS, ESQ.

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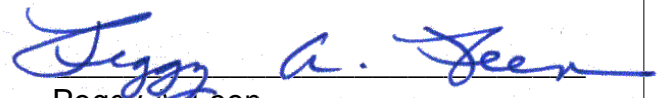
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*Attorneys for HLS of Nevada, LLC dba
Nevada West Financial*

17 **IT IS ORDERED** that the ENE currently scheduled for October 25, 2018, at 1:30 p.m.
18 is **VACATED** and **CONTINUED** to January 10, 2019, at 1:30 p.m. in Chambers Room
19 3071.

20 Dated: October 22, 2018



Peggy A. Leen

United States Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 2018, pursuant to FRCP 5, I served via the CM-ECF electronic filing system the foregoing **MOTION TO RESCHEDULE EARLY NEUTRAL EVALUATION SESSION** to the following parties:

Michael P. Balaban, Esq.
LAW OFFICES OF MICHAEL P. BALABAN
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Attorney for Plaintiff

/s/ Jason G. Martinez
An employee of Kim Gilbert Ebron

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Ex. A

EXHIBIT A

Declaration of David Rosenberg

Ex. A

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**DECLARATION OF DAVID ROSENBERG IN SUPPORT OF HLS OF NEVADA, LLC'S
REQUEST TO RESCHEDULE EARLY NEUTRAL EVALUATION SESSION**

I, David Rosenberg, declare as follows:

1. I am over the age of eighteen years old and competent to testify.
2. I am a resident of Las Vegas, Nevada.
3. Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration, and for those facts stated on information and belief, I believe them to be true.
4. I am the Executive Chairman of HLS of Nevada, LLC dba Nevada West Financial ("HLS"). I am also an attorney licensed to practice law in the state of Nevada (Bar No. 10738).
5. I make this declaration in support of HLS' Request to Reschedule Early Neutral Evaluation Session.
6. On March 23, 2018, while visiting my parents in Los Angeles, California, I suffered a traumatic fall and broke my right femur.
7. On March 24, 2018, I underwent surgery at Torrance Memorial. Specifically, my orthopedic surgeon, Dr. Daniel Zinar, inserted a steel rod into my broken femur; that rod runs from my hip all the way down to my knee and is held in place by a screw nailed into my bone.
8. Following surgery, I was hospitalized for a week and then sent back to my parents' house to recover.
9. Over the next month (April 2018), I went from being bedridden to slowly walking again with the assistance of a walker.
10. By the end of the second month post-surgery (May 2018), I had my staples removed, was cleared to travel, and returned home to Las Vegas, Nevada.
11. I then spent the following month (June 2018) using a walker before finally beginning physical therapy in July 2018.
12. In August of 2018, I started to notice that something was very wrong with my leg, as the level of pain that I was experiencing at the surgery site steadily began to increase (rather than decrease, as one would expect), and I began developing new pains in other parts of my body.
13. In September of 2018, I was seen multiple times by Dr. Erik Kubiak, an orthopedic

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1 surgeon located in Las Vegas, Nevada. By this time, I was having difficulty sleeping and walking
2 and had stopped physical therapy. Dr. Kubiak didn't see anything unusual on my x-rays and
3 didn't have a good explanation for why my condition was worsening so quickly. He proceeded
4 to run many tests and scans on me and scheduled a follow-up appointment for October 9, 2018.

5 14. Because Dr. Kubiak had hinted that surgery might eventually be required, I then
6 called and scheduled an appointment with my original surgeon, Dr. Zinar, for October 10, 2018.

7 15. At my follow-up appointment on October 9, 2018, Dr. Kubiak reviewed my scans
8 and confirmed that my bone was fully healed. However, even after reviewing the test results, Dr.
9 Kubiak failed to diagnose a precise cause for my unbearable pain. Dr. Kubiak said I should
10 undergo surgery to have the rod and screw taken out, as removal would hopefully fix the problem.

11 16. On October 10, 2018, I flew back to Los Angeles, California and met with my
12 original surgeon to get a second opinion. Dr. Zinar looked over my test results and told me that,
13 based upon his 30 years of experience as a trauma surgeon, he believed that the hardware needed
14 to come out immediately if I did not want to develop lasting complications and pain in my legs.

15 17. According to Dr. Zinar, the surgery to remove the rod and screw will be painful
16 but not as difficult to recover from as the original surgery, since my femur is now fully healed.

17 18. According to Dr. Zinar, I will need to recover from the surgery at my parents'
18 house in Los Angeles for no less than ten days, revisit Dr. Zinar sometime after that to make sure
19 there are no signs of infection, and, assuming things are healing as expected, I will hopefully then
20 be cleared to return to Las Vegas, Nevada. I will still need to continue using a walker to get
21 around for some period of time after I return, but I should no longer be on any mind-clouding pain
22 medications.

23 19. Dr. Zinar received approval from my insurance to proceed, and he has scheduled
24 my surgery for October 23, 2018, two days before the October 25, 2018 settlement conference.

25 20. On October 11, 2018, I was instructed by my surgeons that the second surgery
26 would go forward on October 16, 2018. I was unable to commit to this date given the incredibly
27 shortened time period.

28 21. On October 15, 2018, I was instructed by my surgeons that they were available to

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1 conduct the second surgery on October 23, 2018. Given the urgency of the second surgery and
2 limited availability of my surgeons, it is imperative that I complete the second surgery on October
3 23, 2018.

4 22. As such, I will be out-of-town recovering and in no condition to take part in
5 settlement discussions on October 25, 2018.

6 23. Because HLS of Nevada, LLC has no employees, there is no one else that I can
7 send in my place to the settlement conference on October 25, 2018.

8 24. Based upon everything that Dr. Zinar has told me about the surgery (and my
9 expectation that both my surgery and recovery will be uneventful), I am confident that I will be
10 able to take part in any settlement meeting rescheduled for the last week of November or later.

11 25. I declare under penalty of perjury that the foregoing is true and correct.

12 Dated this 16th day of October, 2018.

13 /s/ David Rosenberg

14 DAVID ROSENBERG, as Executive
15 Chairman of HLS of Nevada, LLC dba
16 Nevada West Financial
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